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97-182

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CONGRESS OF THE UNITED STATES

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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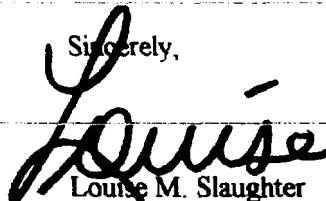
Ms. Karen Kornblush  
Director  
Office Of Legislative and Intergovernmental Affairs  
Federal Communications Commission  
1919 M Street, NW  
Washington, D.C. 20554

Dear Ms. Kornblush:

I received the enclosed letter from my constituent, John D. Doyle. County Executive Doyle is concerned about the proposed FCC rule regarding the preemption of local zoning authority over the placement of Digital Television towers. I would appreciate it if you could respond to Mr. Doyle's concerns. Please send your letter to my Washington, DC office and I will forward the letter to County Executive Doyle.

Thank you for your assistance.

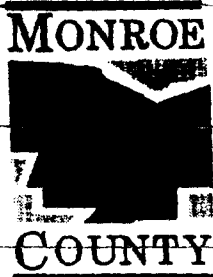
Sincerely,

  
Louise M. Slaughter  
Member of Congress

LMS:jk

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OCT 29 1997



## Office of the County Executive

John D. Doyle  
County Executive

October 28, 1997

Hon. Louise M. Slaughter  
United States House of Representatives  
28th Congressional District  
3120 Federal Building  
100 State Street  
Rochester, New York 14614

SUBJECT: FCC Rule Concerning Placement of Digital Television (DTV) and Radio Towers

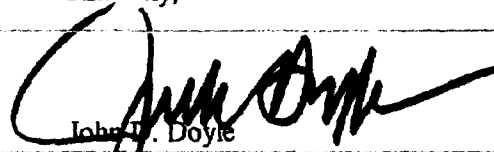
Dear Congresswoman Slaughter:

I am writing to you to voice my support for the concerns raised by Henrico County, Virginia County Manager Virgil R. Hazelett, P.E. to Congressman Thomas J. Bliley, Jr. over the proposed FCC rule regarding the preemption of local zoning authority over the placement of DTV towers, FCC Docket No. 97-182. Mr. Hazelett's concerns are listed in the enclosed Briefing Documents.

Although in New York State cities, towns, and villages have zoning authority as opposed to counties in Virginia, the issues raised in Henrico County's Briefing Documents with regard to preemption of land use control are essentially the same. We even share Henrico County's concern over potential limitation to runway expansion caused by preemption of local zoning authority, as the current Airport Layout Plan for the Greater Rochester International Airport contains a major expansion to our primary commercial aviation runway as well as several other runway modifications.

The Telecommunications Act of 1996 generally presumes local authority over land use. At a minimum, these same standards should also apply to DTV facilities.

Sincerely,



John D. Doyle  
County Executive

JDD/jml  
Enclosure



**Briefing Documents**

**FCC Rulemaking Concerning the Placement of DTV Towers**

**(FCC Docket No. 97-182)**

**Prepared for**

**Congressman Thomas J. Bliley, Jr.**

***Monday, October 20, 1997***

***Henrico County, Virginia***

## ISSUE PAPER

### FCC RULEMAKING CONCERNING PLACEMENT OF DTV TOWERS

(FCC Docket No. 97-182)

County of Henrico, Virginia

The Federal Communications Commission has issued a Notice of Proposed Rule Making (MM Docket No. 97-182) affecting the siting, placement and construction of broadcast station transmission facilities. This proposed rule allows the preemption of state and local zoning and land use restrictions which inhibit or delay the placement of towers and antennas. It was requested by the National Association of Broadcasters and the Association for Maximum Service Television to address an accelerated schedule for construction of digital television ("DTV") transmission facilities. Comments concerning this rule making are due to the FCC by October 30, 1997.

The proposed rule presents a number of serious threats to the orderly development and control of land use in Henrico County. Some of the specific problems for the County and its citizens are identified in this paper.

#### Tuning

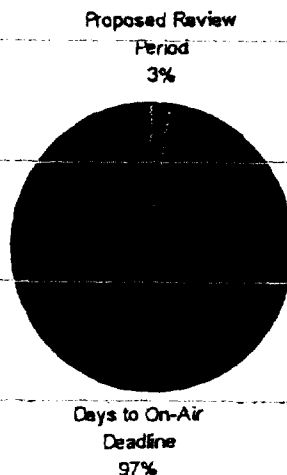
##### *National Schedule*

The rule is proposed to allow the rapid implementation of DTV service throughout the United States and the swift recovery of broadcast spectrum. The schedule calls for the top four networks in the top ten markets to be on the air by May 1, 1999, in the next twenty markets by November 1, 1999, and in the rest of the nation by May 1, 2002. Public television stations have until May 1, 2003 to comply. The top ten markets (those which are under the fast track schedule) account for approximately 30% of the households in the United States. Therefore, the perceived needs of the industry in serving less than one third of the nation are driving the rules which apply to the remaining 70% of the nation. Henrico County and the greater Richmond environs fall into the 70% category. The proposed rule proposes to preempt all local control in our area in order to grant industry control elsewhere.

##### *Richmond Area Schedule*

For the Richmond metropolitan area, the industry has approximately 4-1/2 years to construct DTV broadcast facilities. Under the proposed rule, however, the localities will have a maximum of 45 days to act on a siting request. On requests to relocate a transmission facility within 300 feet of an existing facility the local government response time is reduced to 30 days, and to modify an existing transmission facility the local government response time is reduced to 21 days.

**PROPOSED REVIEW PERIOD AS A % OF TIME TO ON-AIR DEADLINE**



Top Ten Markets	Markets 11-30	Remaining Commercial Stations (includes Richmond Metropolitan Area)	All Non- commercial stations
--------------------	------------------	--	---------------------------------

Percent of US Households by market segment	30%	23%	47%	
Number of Stations	40	80	1037	365
Percent of Total Stations by Market Segment	2.6%	5.3%	68.1%	24.0%
Total Days to HDTV On-Air Deadline (beginning 10/20/97)	558	742	1654	2019
HDTV On-Air Deadline	1-May-99	1-Nov-99	1-May-02	1-May-03
Proposed Local Governmental Review Period for modification of broadcast facilities.(in days)	21	21	21	21
Proposed Local Government Review Period for action to relocate towers < 300 feet.	30	30	30	30
Proposed Local Government Review Period for action on all other requests.	45		45	45
Proposed Local Governmental Review Period as a percentage of Total Days to On-Air Deadline.	8.1%	6.1%	2.7%	2.2%

### *Henrico Approval Process*

Generally speaking, it takes Henrico County approximately 60 to 75 days to act on a zoning request. This includes statutorily mandated notice requirements (to adjacent landowners and to the general public) before both the Planning Commission hearing and the Board of Supervisors hearing as well as site review and other necessary administrative review procedures. Our process is efficient and thorough, and is considered to be a faster turnaround than most localities of our size.

These time lines are further complicated by certain seasonal adjustments in meeting schedules. While the Henrico Board of Supervisors usually meets twice a month, there are at least two months when the Board meets only once. Furthermore, the Board is not allowed by law to meet by conference call or by video conferencing. Therefore, calling an emergency meeting and assuring a quorum during traditional vacation or holiday times when planning commissioners or Board members may be out of state or out of the country is exceedingly difficult.

In addition, short turnaround time frames do not allow reasonable access to public meetings for those landowners, business entities, or other interested citizens to attend meetings and voice their concerns. The public is accustomed to these issues being advertised and heard on a set schedule. The 45-day time limit makes no allowance for these types of circumstances; does not give any consideration for due process concerns; and is not in the best interests of the public.

Should the Henrico County Board of Supervisors deny a siting request for a broadcast tower or facility, the Board then has five days to convey its denial in writing and supported by substantial evidence contained in a written record to the applicant. The applicant, however, has thirty days to respond to the denial. This has the effect of allowing the County only five days to prepare a legally-defensible document which will withstand possible challenge before the FCC while the applicant has six times as much time to prepare his response. This is extremely inequitable.

Finally, the FCC has granted itself the privilege of extending or waiving the deadlines should an applicant experience delays beyond its control. The applicant can request the FCC to extend the deadline should there be any delay as a result of a number of issues, including local siting problems. Thus, the applicant does have recourse to deal with a greater time frame than 45 days, and the arbitrary setting of this deadline is unnecessary and inappropriate. The FCC has not been requested by the broadcast industry to preempt the authority of other federal agencies or practices of the private sector. For example, if the applicant experiences difficulty or delay in acquiring the necessary equipment or FAA approval, there are no sanctions. The applicant may simply apply for an extension in the deadline. Thus, equipment suppliers are under no mandated deadlines to provide services or equipment nor is the Federal Aviation Administration required to change or expedite its review procedures to meet the FCC deadlines.

## Scope of Coverage

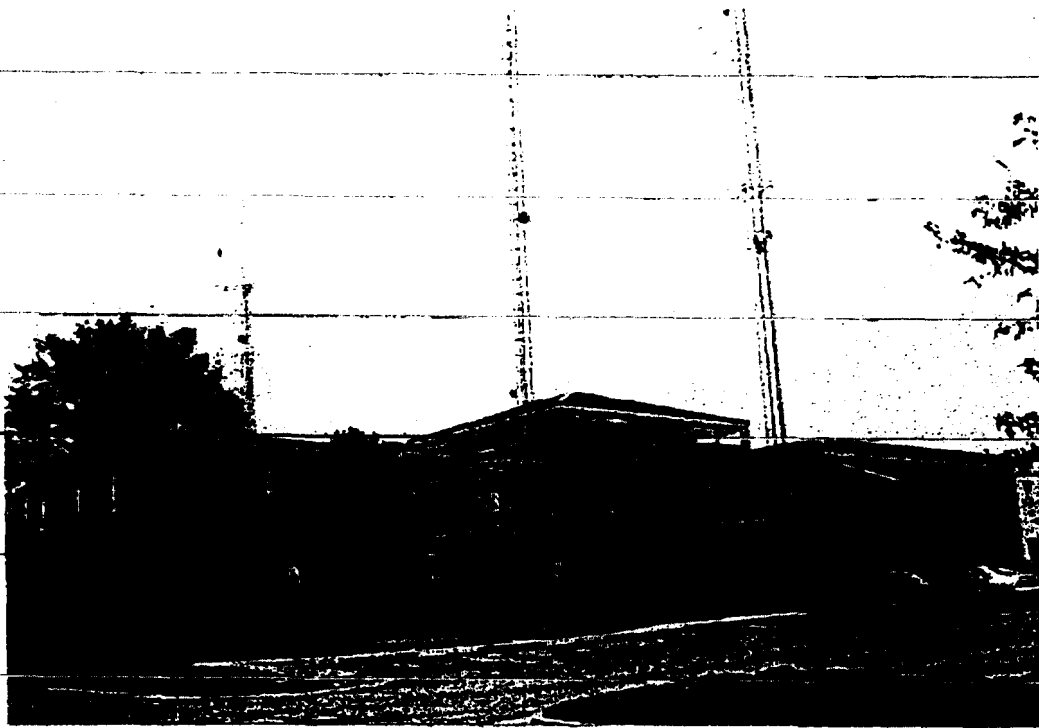
The rule covers the siting, constructing, and modifying of "broadcast transmission facilities," which are defined as towers, broadcast antennas, associated buildings, and all equipment cables and hardware used for the purpose of or in connection with radio or television broadcast transmissions. Within the Richmond metropolitan area, there are four major television network broadcast stations, one public television station, and approximately 20 radio broadcast stations. Under the proposed rule, each of these stations would be entitled to build or modify towers or antennas without regard to any local government zoning laws, land use regulations, building regulations or similar laws except where a clearly defined and expressly stated health or safety objective can be demonstrated.

### *DTV Towers*

Numerous documents currently describe DTV towers that may be as tall as 2,000 feet. Other reports describe these towers in the 700-foot range. By either description, such towers will be very large and have a significant impact on the area in which they are located. Contrary to the siting requirements of cellular telephone towers where grids are relatively small, the area in which a transmission tower may be located is quite large, encompassing much of an entire region. To demand that local government allow the siting of a transmission tower on a single specific site without regard for zoning or other land use regulations is unreasonable. In the Richmond area, it is likely that a maximum of five such towers will be needed. One such tower currently exists in Richmond (the Channel 6-CBS affiliate). The location of the remaining four towers will be determined sometime during the next 4-1/2 years. To suggest that these four towers may be randomly located at the wishes of the broadcasting industry without any consideration of local zoning or land use regulations or the impact on surrounding properties is totally unacceptable and ignores the rights of the citizens to expect reasonable protection for private property rights.

### *Radio Towers*

The proposed rule, however, goes well beyond the need to construct a limited number of DTV towers. It has included within its purview radio towers even though they are not related to the advancement of DTV service. Under the guise that some radio towers may be displaced by the construction of new or modified DTV towers, the rule will apply to all radio towers, both AM and FM. There are approximately 24,000 such towers nationwide. To suggest that the owners of these towers should enjoy an exemption from local regulations not granted to other industries is unnecessary and unwise. In the Richmond metropolitan area, approximately 20 radio stations currently exist and will qualify for the unregulated siting of towers.



### *Associated Buildings*

The rule also cites within its definition "associated buildings." Under this definition, the owner of a broadcast tower could choose to site a tower within a zoning classification which does not allow commercial entities, and under its exemption privilege, also locate the entire production facility on the same site as "associated buildings . . . used for the purpose of or in connection with radio or television transmissions." In such an instance, the site could then contain one or more large buildings, parking facilities, exterior lighting, etc., all of which would be exempt from local zoning and/or building regulations. There is no ability for the local government to require mitigating actions such as screening, privacy fencing, landscaping, stormwater control, egress to the property, or other generally accepted methods of lessening the impact of the facility on the adjoining landowners and community.

### *Collocation*

The proposed rule specifically cites collocation as a deterrent to siting. The encouragement of collocation is, however, one method of managing the number of such towers necessary in a region and facilitates cooperation among the providers within a region. Henrico County requires that applicants for tower sites certify that they have made reasonable efforts to collocate and were unsuccessful in this initiative. Further, new tower sites are approved on the condition other providers will be allowed collocation on their facility when requested. The lack of local government's ability to require such conditions would serve to discourage collocation and encourage an unnecessary proliferation of towers.





### Safety and Health Exclusions

The proposed rule allows local governments to deny a request to site or modify a broadcast transmission facility only upon a clearly defined and expressly stated health or safety objective. This constitutes a narrow exception which does not take into account other legitimate reasons for denial. There is no exception for adjacency to historic sites, residential areas, scenic byways, or land which is being planned for uses which are incompatible with the location of a tower (and associated buildings) site. Similar concerns exist for the location of support cables, electrical transformers, and transmission equipment.

### *Planned Development*

The Richmond International Airport is located in the eastern portion of the County. Its runways are currently protected by the Airport Overlay District required by the FAA. The airport commission, however, has in its plan several proposed runway extensions and/or additions. These extensions/additions have not yet received final approval or funding from the FAA. It is conceivable, therefore, that a tower could be sited within the flight path of one or more of the options under consideration by the airport commission. The effect of such a siting would be to landlock the airport, creating a major impact on the ability of the region to meet its transportation needs in the future, severely limiting the air travel options of our citizens, and negatively impacting economic development.

Similar problems will exist where there are proposed highways, parks, or other uses which will not constitute a safety or health risk at the exigent moment but the elimination of which could stifle the long range planning ability of the state and local governments. In addition, Henrico County falls under the auspices of the Chesapeake Bay Act. It is uncertain how the ordinances enacted by the County pursuant to the Chesapeake Bay Act will be

viewed. The provisions of the Act may not be viewed by the FCC as constituting a safety or health objective, yet all other construction within the County must comply with the provisions of the Act.

Finally, the loss of local government control would completely negate the provisions of the Comprehensive Plan which is adopted for the orderly development of the County. The Comprehensive Plan is developed with the input and assistance from the community as a whole and is adopted following numerous public hearings by the Board of Supervisors. To allow one segment of the industrial community to enjoy complete immunity from the proper planning and development wishes of the community at large undermines the democratic process established by the state for local government land use decisions.

#### Resolution of Disputes

Currently, disputes which occur as a result of disagreement over the siting of a facility are resolved in the courts. This is historically a fair and equitable way of resolving disputes between government and private entities. In its proposed rule, the FCC grants itself exclusive jurisdiction in the resolution of disputes either through the use of alternative dispute resolution or declaratory relief. This preemption of local government authority expressly contradicts the wishes of Congress in the 1996 Telecommunications Act, wherein local governments are granted full control of local land use and zoning decisions. For the FCC to usurp this authority at the request of the broadcasting industry is both inappropriate and unfair.

#### Conclusion

Henrico County welcomes the telecommunications industry, with all of its technological advances and benefits, to the community. It does so, however, with the understanding that such industry will serve its citizens without denigrating the authority of the elected government, undermining the citizens' ability to provide input in the decision making process, and unduly impacting other needs and concerns of the community as a whole. The County looks forward to working with the industry in the locating and constructing of towers and associated facilities for the advancement of DTV. The far-reaching restrictions of the proposed FCC rule, however, should be rejected in favor of allowing reasonable and customary decisions at the local level in a timely manner.

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Preemption of State and Local Zoning and  
Land Use Restrictions on the Siting,  
Placement and Construction of Broadcast  
Station Transmission Facilities

MM Docket No. 97-182

NOTICE OF PROPOSED RULE MAKING

Adopted: August 18, 1997

Released: August 19, 1997

Comment Date: October 30, 1997

Reply Comment Date: December 1, 1997

By the Commission:

I. Introduction

1. The Commission is undertaking this proceeding to consider whether and in what circumstances to preempt certain state and local zoning and land use ordinances which present an obstacle to the rapid implementation of digital television ("DTV") service. Such ordinances may also serve to unduly inhibit the resiting of antennas made necessary by the implementation of DTV or stand as an obstacle to the institution and improvement of radio and television broadcast service generally. This issue has been brought before the Commission in a "Petition for Further Notice of Proposed Rule Making" filed jointly by the National Association of Broadcasters ("NAB") and the Association for Maximum Service Television ("Petitioners").<sup>1</sup> While that Petition raises a number of issues crucial to the successful roll-out of digital television, it also raises a number of questions concerning the scope of any preemption of state and local laws and ordinances and the need to exercise that authority.

<sup>1</sup> This petition was filed in the Commission's Digital Television proceeding Fifth Report and Order in MM Docket No. 87-268, FCC 97-116 (April 22, 1997) ("Fifth Report and Order"), 62 F.R. 26996 (May 16, 1997). The Commission will, however, treat the Petition as one filed pursuant to 47 C.F.R. § 1.401 seeking the institution of a new rule making proceeding.

## II. Background

2. In our Fifth Report and Order in the DTV proceeding, we adopted an accelerated schedule for construction of DTV transmission facilities to ensure the preservation of a universally available, free local broadcasting service and the swift recovery of broadcast spectrum. Under the construction schedule set forth in the Fifth Report and Order, affiliates of the top four networks in the top 10 markets are required to be on the air with digital signals by May 1, 1999. Affiliates of the top four networks in markets 11 - 30 must be on the air by November 1, 1999. Under this schedule, more than half of all television households will have access to multiple channels of digital broadcast television programming by November 1, 1999. All other commercial stations are required to construct their DTV facilities by May 1, 2002, and all noncommercial stations must construct their DTV facilities by May 1, 2003.<sup>2</sup> Subject to biennial review, and certain statutory exceptions, the current target date for all stations' return of their analog spectrum is 2006.<sup>3</sup>

3. Petitioners state that this accelerated DTV transition schedule will require extensive and concentrated tower construction. They estimate that 66 percent of existing television broadcasters will require new or upgraded towers to support DTV service, involving an estimated 1000 television towers. Moreover, they state, as a result of the increased weight and windloading of DTV facilities and other tower constraints, a number of FM broadcast stations which have collocated their FM antennas on television towers will be forced to relocate to other existing towers or to construct new transmission facilities.

4. In addition to the logistical problems of modifying and constructing a significant number of towers (e.g., scarcity of construction crews, weather delays, supply shortages), Petitioners state that there "is an array of obstacles arising from state and local regulation of tower siting and construction" including environmental assessments, "fall radius," collocation and marking/lighting requirements, and concerns with interference to other electronic devices.<sup>4</sup> Petitioners are particularly concerned with the delays resulting from the administration of such restrictions, noting that multiple levels of review can last for several months, and that when appeals are involved, the process can take several years.<sup>5</sup>

5. In order to meet the Commission's DTV construction schedule, Petitioners ask the Commission to adopt a rule that would permit the Commission to preempt state and local

<sup>2</sup> Fifth Report and Order, *supra* at ¶ 76. Twenty-four television stations have voluntarily agreed to an 18-month schedule for the construction of their DTV facilities.

<sup>3</sup> Fifth Report and Order, *supra* at ¶¶ 99, 100. See Also Balanced Budget Act of 1997 ("BBA"), Pub. L. 105-33, 111 Stat. 251 (1997) (codified at 47 U.S.C. § 309(j)(14)(A)-(B)) (establishing statutory target date for return of the analog spectrum and setting out exceptions to that deadline).

<sup>4</sup> Petition at pages 7-15.

<sup>5</sup> The Petition describes several instances in which local zoning regulations and related appeals have resulted in lengthy delays in the construction of broadcast facilities. *Id.* at pages 10-15.

zoning and other land use regulations to the extent they unreasonably prohibit or delay the DTV roll-out and other ongoing broadcast transmission facilities construction. They argue that the Commission has the legal authority to engage in such preemption where it is pursuing an objective within the scope of its Congressionally delegated authority and non-federal regulation stands as an obstacle to the accomplishment and execution of that objective. Both criteria, Petitioners assert, are present in the instant matter.

6. Petitioners propose a rule which provides specific time limits for state and local government action in response to requests for approval of the placement, construction or modification of broadcast transmission facilities. The rule proposed by the Petitioners, attached as Appendix B, would require action within 21 days with respect to requests to modify existing broadcast transmission facilities where no change in location or overall height is proposed or to strengthen or replace an existing broadcast transmission facility. Action would be required within 30 days with respect to requests to relocate existing broadcast transmission facilities from a currently approved location to another location within 300 feet, to consolidate two or more broadcast transmission facilities at a common tower or other structure or to increase the height of an existing tower. All other requests would have to be acted upon within 45 days.<sup>6</sup> Failure to act within these time limits would cause the request to be deemed granted.

7. Additionally, the requested rule would remove from local consideration certain types of restrictions on the siting and construction of transmission facilities. Petitioners would categorically preempt regulations based on the environmental or health effects of radio frequency ("RF") emissions to the extent a broadcast facility has been determined by the Commission to comply with its regulations and policies concerning emissions; interference with other telecommunications signals and consumer electronics devices as long as the broadcast antenna facility has been determined by the Commission to comply with its applicable regulations and/or policies concerning interference; and tower marking and lighting requirements provided that the facility has been determined by the Commission or the Federal Aviation Administration to comply with applicable tower lighting, painting and marking regulations or policies.

8. Further, the rule would preempt all state and local land use, building, and similar laws, rules or regulations that impair the ability of licensed broadcasters to place, construct or modify their transmission facilities unless the promulgating authority can demonstrate that the regulation is reasonable in relation to a clearly defined and expressly stated health or safety objective other than the categorical preemptions described above.

<sup>6</sup> Congress addressed the overlap between state and local and federal regulatory authority over tower siting in the context of personal wireless services facilities in the Telecommunications Act of 1996, P.L. No. 104-104, 110 Stat. 56 (1996), codified at 47 U.S.C. § 151 et seq. ("1996 Telecommunications Act"). The statute does not, however, set out a specific time frame within which a state or local government must act on a request, rather, it requires that the state or local authority act within a reasonable time. 47 U.S.C. § 332(c)(7)(B)(ii) ("A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.")

9. To provide for expeditious review, the Petitioners' proposed rule requires that any state or local government decision denying a request be in writing, supported by substantial evidence, and delivered to all applicants within 5 days.<sup>7</sup> Any broadcaster adversely affected by any such action could, within 30 days of the decision, petition the Commission for a declaratory ruling on which the Commission, in turn, would have 30 days in which to act.<sup>8</sup> The rule would also authorize the Commission to administer dispute resolution.

### III. Discussion

10. In the Fifth Report and Order, we found that an accelerated roll-out of digital television was essential for four reasons. We found that absent a speedy roll-out, other digital television services might achieve levels of penetration that could preclude the success of over-the-air digital television, leaving viewers without a free, universally available digital programming service.<sup>9</sup> Second, we determined that a rapid construction period would promote DTV's competitive strength internationally, spurring the American economy in terms of manufacturing, trade, technological development, international investment, and job growth.<sup>10</sup> Third, we stated that "an aggressive construction schedule helps to offset possible disincentives that any individual broadcaster may have to begin digital transmissions quickly."<sup>11</sup> Finally, we found that a rapid build-out would work to ensure that the recovery of broadcast spectrum occurs as quickly as possible.<sup>12</sup> This will enable the federal government to reallocate some of the recovered spectrum for public safety purposes, and to eventually auction the rest.<sup>13</sup>

<sup>7</sup> This portion of the proposed rule generally tracks the procedures by which a state or local authority may deny a request to construct personal wireless services facilities as outlined in the 1996 Telecommunications Act. 47 U.S.C. § 332(c)(7)(B)(iii) ("Any decision by a state or local government or any instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.")

<sup>8</sup> While the 1996 Telecommunications Act contains procedures for the appeal of a State or local government decision in the context of the construction and placement of personal wireless service facilities, these procedures differ from the procedures proposed by the Petitioners. 47 U.S.C. § 332(c)(7)(B)(v) ("Any person adversely affected by any final action or failure to act by a state or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.")

<sup>9</sup> Fifth Report and Order, *supra* at ¶ 80.

<sup>10</sup> *Id.* at ¶ 81.

<sup>11</sup> *Id.* at ¶ 82.

<sup>12</sup> *Id.* at ¶ 83.

<sup>13</sup> See Notice of Proposed Rule Making in ET Docket No. 97-157, FCC 97-245, Reallocation of Television Channels 60-69, the 746-806 MHz Band (July 9, 1997). See Also BBA, *supra* note 3, (codified at 47 U.S.C. § 337) (providing for the allocation of 24 megahertz of returned spectrum to be allocated for public safety services and 3 megahertz of that spectrum to be auctioned for commercial use)

11. To achieve these purposes, we instituted an "aggressive but reasonable" construction schedule, aimed at exposing as many homes to DTV as early as possible.<sup>14</sup> In the Fifth Report and Order, we noted that circumstances beyond a broadcaster's control, such as difficulties in obtaining zoning and other approvals, may interfere with its ability to meet construction schedule requirements.<sup>15</sup> We are, however, also sensitive to the important state and local roles in zoning and land use matters and their longstanding interest in the protection and welfare of their citizenry. Given the countervailing importance of accelerated construction of DTV transmission facilities, however, we seek to define those circumstances in which it may be necessary to preempt state and local regulations in order to achieve the benefits of a rapid roll-out of DTV.

12. As a preliminary matter, we note that it is well settled that the Communications Act of 1934, as amended ("Communications Act"), comprehensively provides for regulation of radio frequency interference and that the FCC has exclusive jurisdiction to resolve such questions.<sup>16</sup> With regard to interference affecting home consumer equipment in particular, Congress plainly stated in the 1982 amendments to the Communications Act that it intended federal regulation to completely occupy the field to the exclusion of local and state governments.<sup>17</sup> Thus, a rule preempting state and local zoning regulations based on electromagnetic interference would simply codify the existing state of the law. With respect to other aspects of the proposed rule --- preemption of state and local zoning restrictions based on environmental or health effects of RF emissions, tower lighting, painting and marking, and health, safety and traditional land use powers -- we have authority to preempt where state or local law, among other things, stands as an obstacle to the accomplishment and execution of the full objectives of Congress<sup>18</sup> or where we find preemption is "necessary to achieve [our] purposes" within the scope of our delegated authority.<sup>19</sup>

<sup>14</sup> Fifth Report and Order, *supra* at ¶¶ 2, 7.

<sup>15</sup> *Id.* at ¶ 77.

<sup>16</sup> See e.g., 47 U.S.C. §§ 152(a), 301, 303(c), (d), (e), and especially (f); Head v. New Mexico Board of Examiners in Optometry, 374 U.S. 424, 430 n.6 (1963) (the FCC's "jurisdiction over technical matters" associated with the transmission of broadcast signals is clearly exclusive); 960 Radio, Inc., FCC 85-578 (released November 4, 1985) (preempts local zoning authority regulation of interference caused by an FM station); Mobilecom of New York, Inc., 2 FCC Rcd 5519 (Com. Car. Bur. 1987).

<sup>17</sup> H.R. Report No. 765, 97th Cong., 2d Sess. 33 (1982), reprinted in 1982 U.S. Code Cong. & Ad. News 2277 (amendment to Section 302(a) of Act) ("The Conference substitute is further intended to clarify the reservation of exclusive jurisdiction to the Federal Communications Commission over matters involving RFI. Such matters shall not be regulated by local or state law, nor shall radio transmitting be subject to local or state regulation as part of a y effort to resolve an RFI complaint.")

<sup>18</sup> Hines v. Davidowitz, 312 U.S. 52, 68 (1941).

<sup>19</sup> City of New York v. FCC, 486 U.S. 57, 63 (1988). See generally Louisiana Public Service Commission v. FCC, 476 U.S. 355, 368-69 (1986) and cases cited therein.

13. Congress explicitly indicated its objective of a speedy recovery of spectrum in Section 336(c) of the 1996 Telecommunications Act, "Recovery of License."<sup>20</sup> That section requires that the Commission establish as a condition of granting a DTV license the return of either that license or the original license held by the licensee "for reallocation or reassignment (or both) pursuant to Commission regulation." As indicated above, the Commission found that a speedy conversion would enhance the likelihood of success for the DTV roll-out and allow for the rapid recovery of spectrum. The Commission determined that a lethargic conversion would, to the contrary, undermine the potential for a successful conversion and thereby undermine the potential for such a recovery, as sought by Congress. The Commission also determined that the prompt, broad availability of DTV to the American public was an important public interest goal.<sup>21</sup>

14. Delays in local zoning and land use decisions would hold up the construction of an essential part of the DTV transmission system and make it impossible for a licensee to satisfy the construction requirement to transmit "a DTV signal strong enough to encompass the community of license," by the required deadline.<sup>22</sup> This could leave broadcasters unable to "give a great number of viewers access to a DTV signal in a very short period."<sup>23</sup> To the extent that state and local ordinances result in delays that make it impossible for broadcasters to meet our construction schedule and provide DTV service to the public, important Congressional and FCC objectives regarding prompt availability of this service to the public and prompt recovery of spectrum would be frustrated.

15. At the same time, we are sensitive to the rights of states and localities to protect the legitimate interests of their citizens and we do not seek to unnecessarily infringe these rights. The Commission recognizes its obligation to "reach a fair accommodation between federal and nonfederal interests."<sup>24</sup> Thus, it is incumbent upon the Commission not to "unduly interfere with the legitimate affairs of local governments when they do not frustrate federal objectives."<sup>25</sup> These include not only certain health and safety regulations, which the Petitioners' proposed rule recognizes, but also the right of localities to maintain their aesthetic

<sup>20</sup> 47 U.S.C. § 336(c). See generally 47 U.S.C. § 151 (purpose of the Act includes "to make available, so far as possible...a rapid, efficient Nation-wide and world-wide radio communication service with adequate facilities") 47 U.S.C. § 157 ("It shall be the policy of the United States to encourage the provision of new technologies and services to the public.").

<sup>21</sup> Fifth Report and Order, *supra* at ¶ 5.

<sup>22</sup> Fifth Report and Order, *supra* at ¶ 91.

<sup>23</sup> *Id.* at ¶ 76. See also *id.* at ¶¶ 84-85 and 87.

<sup>24</sup> *Arceibo Radio Corporation*, 101 FCC 2d 545, 550 (1985); see *City of New York v. FCC*, 486 U.S. 57, 64 (1988) (Commission exercise of preemption power must represent reasonable accommodation of conflicting policies.)

<sup>25</sup> Notice of Proposed Rule Making, In the Matter of Preemption of Local Zoning Regulations of Receive-Only Satellite Earth Stations, 100 FCC 2d 846, 853 (1985). See also Preemption of Local Zoning Regulations of Satellite Earth Stations, IB Docket No 95-59, 11 FCC Rcd 5809 (1996).



qualities.<sup>26</sup> Indeed, historically we have sought to avoid becoming unnecessarily involved in local zoning disputes regarding tower placement. Nevertheless, we have adopted rules preempting local zoning ordinances where the record established that such ordinances were inhibiting the implementation of Congressional or FCC objectives, including with regard to locating satellite "dish" antennas and amateur radio towers.<sup>27</sup>

16. The Petitioners' proposed rule would cover siting of all broadcast transmission facilities construction. That is, petitioners have not limited their preemption rule to DTV-related construction, including the involuntary relocation of FM antennas now collocated on television towers. It is less clear that preemption will be needed where broadcasters do not face exigencies such as DTV construction deadlines. There are now over 12,000 radio and 1,500 television station licenses outstanding, totals which suggest that generally compliance with state and federal laws relating to broadcast station construction and operation has been possible and that state regulation has not been an insuperable obstacle to the exercise of the Commission's "powers to promote and realize the vast potentialities of radio."<sup>28</sup> In these circumstances, we seek information on whether any preemption rule should be limited to DTV construction and to radio station transmission facility relocations resulting from such construction.<sup>29</sup> We also seek additional information on Petitioners' assertion that local zoning regulation "stands as an obstacle to the implementation of the DTV conversion and to the institution and improvement of broadcast service generally."<sup>30</sup>

#### IV. Request for Comments

17. In order to determine whether preemption is necessary and desirable and the scope of any preemption rule, we seek comment on a number of issues. This will enable the Commission to determine whether and how extensively it should exercise its authority to preempt state and local zoning and land use laws and ordinances.

18. As an initial matter, we generally invite comment on the Petitioners' proposals for the preemption of state and local laws, regulations and restrictions on the siting of broadcast transmission facilities. We seek comment on the Petitioners' proposed preemption rule.

<sup>26</sup> See Preemption of Local Zoning Regulations of Receive-Only Satellite Earth Stations, 100 FCC 2d 846, at ¶ 21; Amendment of Part 73 of the Commission's Rules to More Effectively Resolve Broadcast Blanketing Interference, 11 FCC Rcd 4750, 4754 (1996) (localities best situated to resolve local land use and related aesthetic questions).

<sup>27</sup> E.g., Preemption of Local Zoning or Other Regulation of Receive-Only Satellite Earth Stations, CC Docket No. 85-87, 59 FR 2d 1073 (Released Feb. 5, 1986); Federal Preemption of State and Local Regulations Pertaining to Amateur Radio Facilities, PRB -1 50 Fed. Reg. 38813 (Sept. 25, 1985).

<sup>28</sup> National Broadcasting Company v. United States, 319 U.S. 190, 217 (1943).

<sup>29</sup> But see paragraph 21, *infra*.

<sup>30</sup> Petition at page 22.

Alternatively, we request comment on whether any rule we adopt should focus on actions state and local governments would be preempted from taking or what state or local authority would be preempted by failure to act within a specified time period.<sup>31</sup>

19. We seek a detailed record of the nature and scope of broadcast tower siting issues, including delays and related matters encountered by broadcasters, tower owners and local government officials. Although Petitioners provide anecdotal evidence regarding difficulties encountered by several broadcasters in attempting to meet local ordinances in connection with tower siting and construction, we have no basis on which to determine the extent to which such difficulties are representative of radio and television broadcast industry tower siting experiences generally. So that we might have a factual basis upon which to determine the nature and extent of the problem, we ask commenters to provide us with information on their experiences, both positive and negative, with state and local zoning and land use approvals, and with the application of other laws and ordinances in connection with their efforts to site, construct and operate radio and television transmission towers. Particularly relevant would be comments on the duration of local permitting processes tied to such laws and ordinances. We are also particularly interested in receiving information about experiences related to obstacles and time constraints or delays encountered by broadcasters and tower owners in the top 30 markets.<sup>32</sup>

20. We are especially interested in the extent to which commenters believe any such difficulties are representative of difficulties that are now being faced or will be faced in the context of DTV build-out. Also, we request comments on whether existing laws, ordinances and procedures are likely to impede adherence to our accelerated DTV build-out schedule.

21. We seek comment on the scope of the preemption proposed by Petitioners, on the range of facilities to which the rule should apply and on the state and local laws, regulations, and other restrictions which federal law might preempt. Should we preempt local regulation for all broadcast facilities? Should the preemption be limited to construction of DTV transmission facilities and the relocation of those FM radio facilities displaced by DTV? Should the preemption be limited to the top markets in which the DTV roll-out schedule is more aggressive?

22. Should the Commission preempt state and local restrictions regarding exposure to RF emissions from broadcast transmission facilities? Are there other circumstances in which it is appropriate for the Commission to preempt state and local regulation of the siting or

<sup>31</sup> See, e.g., 47 C.F.R. § 25.104.

<sup>32</sup> The top thirty television markets, as ranked by Nielsen Media Research as of April 3, 1997 are: New York, Los Angeles, Chicago, Philadelphia, San Francisco, Boston, Washington, D.C., Dallas-Fort Worth, Detroit Atlanta, Houston, Seattle-Tacoma, Cleveland, Minneapolis-St. Paul, Tampa-St. Petersburg, Miami, Phoenix, Denver, Pittsburgh, Sacramento-Stockton, St. Louis, Orlando-Daytona Beach, Baltimore, Portland, OR, Indianapolis, San Diego, Hartford-New Haven, Charlotte, Raleigh-Durham, and Cincinnati.

construction of transmission facilities? Should federal regulation preempt local regulation intended for aesthetic purposes?

23. We seek comment on the procedural framework proposed by Petitioners. Are the time frames proposed by Petitioners reasonable? Specifically, should we preempt state and local government authority where they fail to act within certain time periods? If so, what should be those time periods? Is 45 days appropriate, or would 90 days be more realistic for broadcast tower applications? Can the DTV construction schedule in the Fifth Report and Order be reconciled with the procedures of states and localities? In the event that we preempt as to procedural aspects of zoning and land use regulation, what constraints, if any, are there on the ability of state and local governments to meet the expedited procedures sought by Petitioners? We specifically ask states and localities to comment on their current procedures, their need to use these procedures, the possibility of using expedited procedures to assure our DTV construction schedule is met, and the nature of such expedited procedures. Is there an appropriate role for the Commission in resolving disputes between localities and licensees with respect to tower siting issues? What is the nature of that role -- arbitrator, mediator or simply the provider of a forum to which parties can turn for suggestions on resolving local disputes? Is outside arbitration, administered by the Commission, an appropriate forum for alternative dispute resolution?

24. We note that we recently received an Advisory Recommendation on the Petitioner's proposal from the Commission's Local and State Government Advisory Committee.<sup>33</sup> This recommendation will be incorporated into the public record of this proceeding, and we will consider the issues raised by the Committee in this and any future filing.

#### V. Administrative Matters

25. Comments and Reply Comments. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before October 30, 1997, and reply comments on or before December 1, 1997. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554.

<sup>33</sup> Local and State Government Advisory Committee Recommendation No. 3, NAB Petition for Further Notice of Proposed Rule Making, MM Docket 97-286, August 1, 1997.

26. Initial Paperwork Reduction Act of 1995 Analysis. We have not proposed in this proceeding any proposed or modified information collection requirement.

27. Ex Parte Rules. This is a non-restricted notice and comment rule making proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission Rules. See generally 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

28. Initial Regulatory Flexibility Analysis. With respect to this Notice, an Initial Regulatory Flexibility Analysis ("IRFA") is contained in Appendix A. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an IRFA of the expected impact on small entities of the proposals contained in this Notice. Written public comments are requested on the IRFA. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number of questions in our IRFA regarding the prevalence of small businesses in the industries covered by this Notice. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the Notice, but they must have a distinct heading designating them as responses to the IRFA. The Secretary shall send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 et seq. (1981), as amended.

29. Authority. This Notice is issued pursuant to authority contained in Sections 4(i), 303, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303, 307 and 336.

30. Additional Information. For additional information on this proceeding, please contact Keith Larson, Assistant Bureau Chief for Engineering or Susanna Zwerling, Policy and Rules Division, Mass Media Bureau (202) 418-2140.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton  
Acting Secretary

## APPENDIX A

## Initial Regulatory Flexibility Analysis

As required by Section 603 of the Regulatory Flexibility Act ("RFA"), 5 U.S.C. § 603, the Commission is incorporating an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and proposals in this Notice of Proposed Rule Making ("Notice"). Written public comments concerning the effect of the proposals in the Notice, including the IRFA, on small businesses are requested. Comments must be identified as responses to the IRFA and must be filed by the deadlines for the submission of comments in this proceeding. The Secretary shall send a copy of this Notice, including the IRA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act.<sup>34</sup>

**Reasons Why Agency Action is Being Considered:** ~~IFifth~~ Report and Order in its digital television proceeding (MM Docket No. 87-268) the Commission adopted an accelerated roll-out schedule for digital television stations. That schedule requires the top four network affiliates in the top ten television markets to construct their digital television facility and begin emitting signals by May 1, 1999. Affiliates of these four networks in markets 11 - 30 must be on the air by November 1, 1999. All other commercial stations will have to construct their DTV facilities by May 1, 2002, and noncommercial stations by May 1, 2003. The Commission found this accelerated schedule necessary to promote the success of DTV and allow for spectrum recovery, a goal shared by Congress. In a rule making petition filed by the National Association of Broadcasters and the Association of Maximum Service Television the Petitioners claim that state and local zoning and land use laws, ordinances, and procedures may have a delaying effect on the siting, placement and construction of new television towers that will be needed for DTV. Additionally, they contend, the antennas of many FM radio stations will need to be displaced from existing towers to enable them to support new DTV antenna arrays and these FM stations will have to build new towers to enable them to continue to serve the public. Accordingly, they ask the Commission to adopt a rule preempting state and local laws, ordinances and procedures that could work to delay the inauguration of DTV service. The Commission believes the prompt deployment of DTV is essential to several goals, and that compliance with such local requirements may, at least in some cases, both make compliance with both these procedures and the roll-out schedule impossible. Additionally, it believes that some of these state and local regulations may stand as obstacles to the accomplishment of the rapid transition to DTV service and the spectrum recovery that it will permit. This recovery is also an important congressional purpose as evidenced by its 1996 adoption of 47 U.S.C. § 336.

<sup>34</sup> Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 et seq. (1981), as amended.

**Need For and Objectives of the Proposed Rule Change:** Commissioners have demonstrated that at least some state and local zoning and land use laws, ordinances and procedures may, unless preempted by the Commission, prevent television broadcasters from meeting the construction schedule for DTV stations established by the Commission, retarding the recovery of frequency spectrum by the government for reallocation and delaying digital service to the public. Additionally, in some cases they may result in discontinuation of FM radio service to the public should displaced FM antennas be unable to relocate to new antenna towers.

**Legal Basis:** Authority for the actions proposed in this Notice may be found in Sections 4(i), 303(r), and 336 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and 336.

**Recording, Recordkeeping, and Other Compliance Requirements:** The Commission is not proposing any new or modified recordkeeping or information collection requirements in this proceeding.

**Federal Rules that Overlap, Duplicate, or Conflict with the Proposed Rules:** The initiatives and proposed rules raised in this proceeding do not overlap, duplicate or conflict with any other rules.

**Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply:** Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. § 601(6). The RFA, 5 U.S.C. § 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. § 632. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."<sup>35</sup>

The proposed rules and policies will apply to television broadcasting licensees, radio broadcasting licensees and potential licensees of either service. The Small Business

<sup>35</sup> While we tentatively believe that the SBA's definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations, for purposes of this Notice, we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply, but we reserve the right to adopt a more suitable definition of "small business" as applied to radio and television broadcast stations or other entities subject to the proposed rules in this Notice and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities in the future. See Report and Order in MM Docket No. 93-48 (Children's Television Programming), 11 FCC Rcd 10660, 10737-38 (1996), citing 5 U.S.C. § 601(3).

Administration defines a television broadcasting station that has no more than \$10.5 million in annual receipts as a small business.<sup>36</sup> Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.<sup>37</sup> Included in this industry are commercial, religious, educational, and other television stations.<sup>38</sup> Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.<sup>39</sup> Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.<sup>40</sup> There were 1,509 television stations operating in the nation in 1992.<sup>41</sup> That number has remained fairly constant as indicated by the approximately 1,558 operating television broadcasting stations in the nation as of May 31, 1997.<sup>42</sup> For 1992<sup>43</sup> the number of television stations that produced less than \$10.0 million in revenue was 1,155 establishments.<sup>44</sup>

Additionally, the Small Business Administration defines a radio broadcasting station that has no more than \$5 million in annual receipts as a small business.<sup>45</sup> A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs

<sup>36</sup> 13 C.F.R. § 121.201, Standard Industrial Code (SIC) 4833 (1996).

<sup>37</sup> Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 CENSUS OF TRANSPORTATION, COMMUNICATIONS AND UTILITIES, ESTABLISHMENT AND FIRM SIZE, Series UC92-S-1, Appendix A-9 (1995).

<sup>38</sup> *Id.* See Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes "Television Broadcasting Stations (SIC Code 4833) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

<sup>39</sup> Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 CENSUS OF TRANSPORTATION, COMMUNICATIONS AND UTILITIES, ESTABLISHMENT AND FIRM SIZE, Series UC92-S-1, Appendix A-9 (1995).

<sup>40</sup> *Id.* SIC 7812 (Motion Picture and Video Tape Production); SIC 7922 (Theatrical Producers and Miscellaneous Theatrical Services (producers of live radio and television programs).

<sup>41</sup> FCC News Release No. 31327, Jan. 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 78, Appendix A-9.

<sup>42</sup> FCC News Release "Broadcast Station Totals as of May 31, 1997.

<sup>43</sup> Census for Communications' establishments are performed every five years ending with a "2" or "7". See Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 78, III.

<sup>44</sup> The amount of \$10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

<sup>45</sup> 13 C.F.R. § 121.201, SIC 4832.

by radio to the public.<sup>46</sup> Included in this industry are commercial religious, educational, and other radio stations.<sup>47</sup> Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.<sup>48</sup> However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number.<sup>49</sup> The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than \$5 million in revenue in 1992.<sup>50</sup> Official Commission records indicate that 11,334 individual radio stations were operating in 1992.<sup>51</sup> As of May 31, 1997, official Commission records indicate that 12,156 radio stations were operating, of which 7,342 were FM stations.<sup>52</sup>

Thus, the proposed rules will affect many of the approximately 1,558 television stations; approximately 1,200 of those stations are considered small businesses.<sup>53</sup> Additionally, the proposed rules will affect some of the 12,156 radio stations, approximately 11,670 of which are small businesses.<sup>54</sup> These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies.

In addition to owners of operating radio and television stations, any entity who seeks or desires to obtain a television or radio broadcast license may be affected by the proposals contained in this item. The number of entities that may seek to obtain a television or radio broadcast license is unknown. We invite comment as to such number.

**Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives:** The Notice solicits comment on a variety of

<sup>46</sup> Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 78, Appendix A-9.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM-FM combination counts as one establishment.

<sup>51</sup> FCC News Release No. 31327, Jan. 13, 1993.

<sup>52</sup> FCC News Release "Broadcast Station Totals as of May 31, 1997."

<sup>53</sup> We use the 77 percent figure of TV stations operating at less than \$10 million for 1992 and apply it to the 1997 total of 1558 TV stations to arrive at 1,200 stations categorized as small businesses.

<sup>54</sup> We use the 96% figure of radio station establishments with less than \$5 million revenue from the Census data and apply it to the 12,156 individual station count to arrive at 11,670 individual stations as small businesses.



alternatives discussed herein. Any significant alternatives presented in the comments will be considered. The Commission believes that the proposed rules and policies may be necessary to promote the speedy deployment of digital television service and the prompt recovery of broadcast frequency spectrum for reallocation. We seek comment on this belief.

**Report to Small Business Administration** The Commission shall send a copy of this Initial Regulatory Flexibility Analysis along with this Notice to the Small Business Administration pursuant to the RFA 5 U.S.C. § 603(a). A copy of this IRFA will also be published in the Federal Register.